

04-435

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE U.S. GEOLOGICAL SURVEY

OF THE

DEPARTMENT OF THE INTERIOR

OF THE UNITED STATES OF AMERICA

AND THE

MINISTRY OF THE SUPERIOR EDUCATION

AND SCIENTIFIC RESEARCH

AND THE

MINISTRY OF ENERGY, MINES AND PETROLEUM

OF GABONESE REPUBLIC

CONCERNING

SCIENTIFIC AND TECHNICAL COOPERATION

IN THE EARTH SCIENCES

## Article I. Scope and Objectives

The U.S. Geological Survey of the Department of the Interior of the United States of America (hereinafter referred to as the "USGS") on the one hand, and on the other hand the Ministry of the Superior Education and Scientific Research and the Ministry of Energy, Mines and Petroleum of Gabonese Republic (hereinafter referred to as the "Gabonese party") hereby agree to pursue scientific and technical cooperation in the geological sciences in accordance with this Memorandum of Understanding (hereinafter referred to as "Memorandum").

The purpose of this Memorandum is to provide a framework for the exchange of scientific and technical knowledge and the augmentation of scientific and technical capabilities of the USGS and the Ministry of the Superior Education and Scientific Research and the Ministry of Energy, Mines and Petroleum (hereinafter referred to as the "Parties") with respect to the geological sciences.

For cooperation that extends into subjects outside the authority of the USGS, the USGS may, with the consent of the Ministry of the Superior Education and Scientific Research and the Ministry of Energy, Mines and Petroleum and to the extent permitted by United States laws and policies, endeavor to include the participation of other United States entities in the development and undertaking of activities within the scope of this Memorandum.

For cooperation that extends into subjects outside the authority of the Ministry of the Superior Education and Scientific Research and the Ministry of Energy, Mines and Petroleum of Gabonese Republic, they may, with the consent of the USGS and to the extent permitted by Gabonese laws and policies, endeavor to include the participation of other Gabonese entities in the development and undertaking of activities within the scope of this Memorandum.

## Article II. Cooperative Activities

1. Forms of cooperation under this Memorandum may consist of exchanges of technical information, visits, and cooperative research consistent with ongoing programs of the Parties. Specific areas of cooperation may include, but are not limited to, such areas of mutual interest as:

- A- Geochemical framework studies, including Analytic Chemistry;
- B- Geologic hazards including Remote Sensing;
- C- Global Seismology;
- D- Studies of Environment
- E- Geographic Information Systems
- F- Economic geology including mineral and petroleum resource studies.

2. Activities under this memorandum shall be subject to the laws and regulations of each country.

## Article III. Source of Funding

Cooperative activities under this Memorandum shall be subject to and dependent upon the availability of funds and personnel. The financial arrangements will be agreed upon by the Parties in writing before the commencement of each activity.

## Article IV. Intellectual Property and Security Obligations

Provisions for the protection and distribution of intellectual property created or furnished in the course of cooperative activities under this Memorandum, and provisions for the protection of classified information and unclassified export-controlled information and equipment, are set forth respectively in Annexes I and II, which constitute integral parts of this Memorandum.

## Article V. Disclaimer

Information transmitted by one Party to the other Party under this Memorandum shall be accurate to the best knowledge and belief of the transmitting Party, but the transmitting Party does not warrant the suitability of the information transmitted for any particular use or application by the receiving Party or by any third party.

## Article VI. Planning and Review of Activities

Upon entry into force of this Memorandum, the Parties shall designate representatives who, at times mutually agreed upon by the Parties, shall review the activities under this Memorandum and develop proposals for future activities, as appropriate.

## Article VII. Annex Projects

Any activity carried out under this Memorandum shall be agreed upon by the Parties in writing. Whenever more than the exchange of technical information or visits of individuals is planned, such activity shall be described in an agreed Project Annex to this Memorandum, which shall set forth in terms appropriate to the activity, a work plan, staffing requirements, cost estimates, funding source, and other undertakings, obligations, or conditions not included in this Memorandum. In case of inconsistency between the terms of this Memorandum and the terms of a Project Annex, the terms of this Memorandum shall be controlling.

Activities under this memorandum and its annexes shall be sujet to the laws and regulations of the United States and Gabon.



## ANNEXE I

### INTELLECTUAL PROPERTY

Pursuant to article IV of this Memorandum of Understanding:

The Parties shall ensure adequate and effective protection of intellectual property created or furnished under this Memorandum and relevant implementing arrangements. The Parties agree to notify one another in a timely fashion of any inventions or copyrighted works arising under this Memorandum and to seek protection for such intellectual property in a timely fashion. Rights to such intellectual property shall be allocated as provided in this Annex.

#### I. Scope

A. This Annex is applicable to all cooperative activities undertaken pursuant to this Memorandum, except as otherwise specifically agreed by the Parties or their designees.

B. For purposes of this Memorandum, "intellectual property" shall have the meaning found in Article 2 of the Convention Establishing the World Intellectual Property Organization, done at Stockholm, July 14, 1967.

C. This Annex addresses the allocation of rights, interests, and royalties between the Parties. Each Party shall ensure that the other Party can obtain the rights to intellectual property allocated in accordance with the Annex, by obtaining those rights from its own participants through contracts or other legal means, if necessary. This Annex does not otherwise alter or prejudice the allocation between a Party and its nationals, which shall be determined by that Party's laws and practices.

D. Disputes concerning intellectual property arising under this Memorandum should be resolved through discussions between the concerned participating institutions or, if necessary, the Parties or their designees. Upon mutual agreement of the Parties, a dispute shall be submitted to an arbitral tribunal for binding arbitration in accordance with the applicable rules of international law. Unless the Parties or their designees agree otherwise in writing, the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) shall govern.

E. Termination or expiration of this Memorandum shall not affect rights or obligations under this Annex.

#### II. Allocation of rights

A. Each Party shall be entitled to a nonexclusive, irrevocable, royalty-free license in all countries to translate, reproduce, and publicly distribute scientific and technical journal articles, reports, and books directly arising from cooperation under this Memorandum. All publicly distributed copies of a copyrighted work prepared under this provision shall indicate the names of the authors of the work unless an author explicitly declines to be named.

B. Rights to all forms of intellectual property, other than those rights described in Section II(A) above, shall be allocated as follows:

1. Visiting researchers, for example, scientists visiting primarily in furtherance of their education, shall receive intellectual property rights under the policies of the host institution. In addition, each visiting researcher named as an inventor shall be entitled to share in a portion of any royalties earned by the host institution from the licensing of such intellectual property.

2. (a) For intellectual property created during joint research, for example, when the Parties, participating institutions, or participating personnel have agreed in advance on the scope of work, each Party shall be entitled to obtain all rights and interests in its own territory. Rights and interests in third countries will be determined in implementing arrangements. If research is not designated as "joint research" in the relevant implementing arrangement, rights to intellectual property arising from the research will be allocated in accordance with paragraph II.B.1. In addition, each person named as an inventor shall be entitled to share in a portion of any royalties earned by either institution from the licensing of the property.

2 (b) Notwithstanding paragraph II.B.2 (a), if a type of intellectual property is available under the laws of one Party but not the other Party, the Party whose laws provide for this type of protection shall be entitled to all rights and interests worldwide. Persons named as inventors of the property shall nonetheless be entitled to royalties as provided in paragraph II.B.2 (a).

#### III. Business-confidential information

In the event that information identified in a timely fashion as business-confidential is furnished or created under the Memorandum, each Party and its participants shall protect such information in accordance with applicable laws, regulations, and administrative practice. Information may be identified as "business-confidential" if a person having the information may derive an economic benefit from it or may obtain a competitive advantage over those who do not have it, the information is not generally known or publicly available from other sources, and the owner has not previously made the information available imposing in a timely manner an obligation to keep it confidential.

## SECURITY OBLIGATIONS

### I. PROTECTION OF INFORMATION

Both Parties agree that no information or equipment requiring protection in the interests of national defense or foreign relations of either Party and classified in accordance with the applicable national laws and regulations shall be provided under this Memorandum. In the event that information or equipment which is known or believed to require such protection is identified in the course of cooperative activities undertaken pursuant to this Memorandum, it shall be brought immediately to the attention of the appropriate officials and the Parties shall consult to identify appropriate security measures to be agreed upon by the Parties in writing and applied to this information and equipment and shall, if appropriate, amend this Memorandum to incorporate such measures.

### II. TECHNOLOGY TRANSFER

The transfer of unclassified export-controlled information or equipment between the Parties shall be in accordance with the relevant laws and regulations of each Party. If either Party deems it necessary, detailed provisions for the prevention of unauthorized transfer or retransfer of such information or equipment shall be incorporated into the contracts or implementing arrangements. Export controlled information shall be marked to identify it as export controlled and identify any restrictions on further use or transfer.